

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
 SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<b>United States District Court</b>		<b>District</b> Western District of Michigan
<b>Name (under which you were convicted):</b> <b>Johaun L. Howland</b>		<b>Docket or Case No:</b> <b>1:18-cr-140-1</b>
<b>Place of Confinement:</b> <b>FCI-Hazelton</b>	<b>Prisoner No:</b> <b>22164-040</b>	<b>1:21-cv-1013</b> <b>Janet T Neff</b> <b>U.S. District Judge</b>
<b>Movant</b> <b>JOHAUN L. HOWLAND</b>	<b>V.</b>	<b>United States of America</b>

**MOTION**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
 Western District of Michigan in Grand Rapids, Michigan

(b) Criminal docket or case number (if you know): 1:18-cr-140-1

2. (a) Date of the judgment of conviction (if you know): June 14, 2021

(b) Date of sentencing: 06-14-21

3. Length of sentence: 180 months of imprisonment

4. Nature of crime (all counts):

Ct. 1, Conspiracy to Distribute a Controlled Substance; Ct. 2, Money Laundering Conspiracy; Ct. 3, PWID; Ct. 4, Attempt PWID; Ct. 5, Felon in Possession of a Firearm; and Ct. 6, Possession of a Firearm in Furtherance of Drug Trafficking Crime.

5. (a) What was your plea: (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge Only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: \_\_\_\_\_

(b) Docket or case number (if you know): \_\_\_\_\_

(c) Result: \_\_\_\_\_

(d) Date of result (if you know): \_\_\_\_\_

(e) Citation of the case (if you know): \_\_\_\_\_

(f) Grounds raised: \_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you file any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition Yes ☐ No ☐

(2) Second petition Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Movant Howland, argues firmly that he stands "actually-innocent" of his conviction and

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Movant Howland, asserts that on September 17, 2019, the Grand Jury handed down a Sixth Superseding Indictment, see Doc. # 377. On April 01, 2021, Mr. Howland plead guilty to Count Six of his Sixth Superseding Indictment along with Conspiracy and several other counts of the Sixth Superseding Indictment, see Doc. # 725. On June 14, 2021, Movant Howland was sentenced to 180 months of imprisonment, see Doc. # 794.

Due to the U.S. Supreme Court's Ruling in Mathis v. United States, thus, he stands "actually-innocent" of Count Six, of the Sixth Superseding Indictment for Section 924 (c), Possession of a Firearm In Furtherance Crime, therefore, the Court should VACATE or permit Johaun L. Howland to withdraw his Guilty Plea as to Counts Six in the case herein.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO:** Movant Howland, argues that his ex-lawyer provided him with ineffective assistance of

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Movant Howland, states that on September 17, 2019, the Grand Jury handed down a Sixth Superseding Indictment, see Doc. # 377. On April 01, 2021, Mr. Howland plead guilty to Count Six of his Sixth Superseding Indictment along with Conspiracy and several other counts of the Sixth Superseding Indictment, see Doc. # 725. No objection by Movant Howland's ex-lawyer was rendered during the Rule 11 Plea Hearing as there exist an "insufficient" factual basis in violation of the Federal Rules of Criminal- Rule 11 (b) (3), in which rendered his Guilty Plea unknowingly and unintelligently entered, thus, VOID in violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Deficient performance exist as the result of his ex-lawyer failed to object to an "insufficient" factual basis as to Count Six, thus, satisfying the first prong of the Hill test.

Furthermore, Movant Howland, asserts actual prejudice exist as there is a reasonable probability that absent his ex-lawyer's 'deficient performance' he would not have plead guilty, however, insisted on going to Jury Trial as to Count Six, Section 924 (c) charge in which amounts to ineffective assistance of counsel in violation of his Sixth

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

**Continuation of Ground Two Supporting Facts:**

Amendment Rights of the U.S. Constitution in the case at bar. See Hill.



Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND THREE:** Movant Howland, contends that Count Six of his Sixth Superseding Indictment is

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Movant Howland, states that the Grand Jury issued a Sixth Superseding Indictment on September 17, 2019, see Doc. # 377. On April 01, 2021, Mr. Howland plead guilty to Count Six, Possession of a Firearm in Furtherance of Drug Trafficking Crime along with Conspiracy and several other counts of the Sixth Superseding Indictment, see Doc. # 725. On June 14, 2021, Movant Howland was sentenced to 180 months of imprisonment, see Doc. # 794.

In the instant case, Movant Howland, argues that his ex-lawyer failed to file a Motion to Dismiss Count Six of his ex-lawyer failed to file a Motion to Dismiss Count Six of his Sixth Superseding Indictment as to Section 924 (c), Possession of a Firearm in Furtherance of Drug Trafficking Crime as it is Fatally Defective as it omits the Serial Number in regard

**Continuation of Ground Three Supporting Facts:**

to description of the firearm and omits the ‘jurisdictional element’ “for which the person may be prosecuted in a court of the United States,” thus, Count Six fails to charge a federal offense in violation of his Fifth and Sixth Amendment Rights of the U.S. Constitution. Thus, Movant Howland’s ex-lawyer provided him with ‘deficient performance’ in which establishes the first prong of the Hill test.

Furthermore, Movant Howland, argues firmly that actual prejudice exist as there is a reasonable probability that absent his ex-lawyer’s deficient performance’ he would not have plead guilty to Count Six, however, insisted on going to Jury Trial as to Count Six of his Sixth Superseding Indictment in which amounts to ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution in the situation herein.



**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes", state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment or conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue on appeal?

Yes ☐ No ☐

(6) If your answer to question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result: (attach a copy of the court's opinion or order if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

None of the grounds raised herein have never been raised in any federal court.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type or proceeding, and the issues raised:

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: None

(b) At arraignment and plea: Attorney Scott Graham; 1911 W. Centre Ave. Ste. C; Portage, MI. 49024

(c) At trial: None

(d) At sentencing: Attorney Scott Graham; 1911 W. Centre Ave.; Ste. C; Portage, MI. 49024

(e) On appeal: None

(f) In any post-conviction proceeding: None

(g) On appeal from any ruling against you in a post-conviction proceeding: None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date of the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C § 2255 does not bar your motion.\* (see below) \_\_\_\_\_

Movant Howland, states that his 2255 Motion to Vacate is being filed in a timely manner as he was sentenced on June 14, 2021, thus, he has until June 14, 2022, in which to file a timely 2255 Motion to Vacate consistent with the AEDPA.

\*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. §2255, paragraph 6, provides in part that:

A one-year period limitations shall apply to a motion under this section. The limitation period shall run from the latest of:

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, Movant asks that the Court grant the following relief:  
VACATE Count Six as to Section 924 (c) conviction or permit Movant Howland to withdraw his Guilty Plea as to Count Six; or schedule a prompt Evidentiary Hearing;  
or any other relief to which movant is entitled.

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Signature of Attorney (if any)

I, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_ .  
(month, date, year)

Executed (signed) on 11/29/2021 (date)

*Johann L. Howland*  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.